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09/684,010

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William W. Smith III

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EXAMINER

PLUCINSKI, JAMISUE A

ART UNIT

PAPER NUMBER

3629

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/684,010	Applicant(s) SMITH ET AL.	
	Examiner JAMISUE A. PLUCINSKI	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7,9,10,31 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) 41-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,9,10 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The affidavit under 37 CFR 1.132 filed 7/18/08 is insufficient to overcome the rejection of claims 1-4, 6-7, 9, 10 and 31 based upon Kara and Boucher as set forth in the last Office action because: First, the affidavit is submitted by a person who has a vested interest in the application, and therefore is not considered to have an impartial, unbiased opinion. Furthermore, in the affidavit, the person making the declaration gets in interpreting a patent, and it is unclear in the affidavit if this person has any experience with interpreting patent language. The affidavit is arguing that Boucher does not disclose the limitation to “establish an online connection with the carrier”. Figure 1 of Boucher clearly shows that connection between the server and the carrier to be through the internet. Therefore it is the examiner's position that this is an online connection. In the specification the instant invention may connect with the carrier differently, however Boucher discloses the connection as set forth in the claims. For the reasons mentioned above, the affidavit is not considered to be persuasive.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholls et al. (5,631,827) in view of Boucher et al. (6,976,007).

5. With respect to Claims 1 and 6: Nicholls discloses the use of a centralized computer system for the management of shipping (see abstract), comprising:

- a. A plurality of functionally aligned server computer devices, which are programmed to perform a specific function (See figures 2 and 6).
- b. A first server computer device which is adapted for communicating access of the user (Supervisory Server, Figure 6 with corresponding detailed description); and
- c. A second server used for rating parcels (Rate Server, Figure 6).

6. Nicholls discloses the use of multiple servers performing specific functions and discloses tracking as an option (See Figure 2) but fails to disclose the use of a server used for tracking.

Boucher discloses the use of a multi-carrier package tracking system, with a tracking server (22), which upon receipt of a user tracking request (191) through Instatrak (89), communicates with the appropriate carrier servers to store tracking information and display to the user (See Column 4, lines 48-65 and Column 8, lines 10-22). Boucher discloses that once the specific carrier is determined an online connecting is established with the carrier and the information is obtained from the carrier through the online connection (See abstract and Reference Numerals 24 and 130

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with corresponding detailed descriptions). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Nichols with the tracking server in the multi-carrier tracking system of Boucher, in order to provide a tracking service to a user, and allows a user to obtain prioritized tracking information from a carrier. (See Boucher abstract and column 3)

7. With respect to Claim 3: See Nicholls, Document Server.

8. With respect to Claim 4: See Nicholls, Figures 4A, 4B.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholls and Boucher, as disclosed above for Claim 1, and further in view of Kara (6,233,568) and InterShipper (Newsbytes Article, Internet Update)

10. Nichols discloses a multiple carrier system that calculates rates for carriers with specific parameters such as a notification of delivery, however Nicholls discloses the automatic selection of a carrier and fails to disclose simultaneously displaying the rates of the carriers to the user. Kara discloses a computer program used for multiple shippers that simultaneously displays that calculate shipping rates of multiple carriers for multiple services (See Figure 8, column 22, lines 20-38). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the shipping rates of Nicholls be displayed to the user as disclosed by Kara, in order to present the user with information from which to make an informed choice as to a particular shipping service provider by which to ship a particular item. (See Kara, column 22)

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11. Nicholls and Kara, disclose the use of calculating and displaying rates for specific services, for multiple carriers, but fails to disclose the simultaneous display of the rates for each carrier for each service. InterShipper is an internet, online website, where internet users can enter origin, destination, package weight and dimensions and will be displayed every method possible that you can use to ship your package for all major shippers (See Internet Update Article Page 1, Paragraphs 1-3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nicholls and Kara to display every method possible to ship a package, as disclosed by InterShipper, in order to find the cheapest shipping rate (See Page 1).

12. Claims 7, 9 and 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholls in view of Kara et al. (6,233,568), UPS® Service Guide (www.ups.com) and FedEx® Services (www.fedex.com), InterShipper (Newsbytes Article, Internet Update) and Barnett et al. (6,369,840).

13. With respect to Claims 7, 9 and 31: Nicholls discloses the use of a centralized computer system and method for the management of shipping (see abstract), comprising:

- d. A plurality of functionally aligned server computer devices, which are programmed to perform a specific function (See figures 2 and 6).
- e. A first server computer device which is adapted for communicating access of the user (Supervisory Server, Figure 6 with corresponding detailed description) and accepting parcel information, See Figures 4A and 4B).
- f. A second server used for rating parcels for multiple carriers for multiple services (Rate Server, Figures 2 and 6).

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14. Nichols discloses a multiple carrier system that calculates rates for carriers with specific parameters such as a notification of delivery. However, Nicholls fails to disclose that for each carrier determining whether the carrier would support the shipping of a particular parcel according to rules, and generating a simultaneous display of rates for multiple carriers for a delivery service. Kara discloses simultaneously displaying rates for multiple carriers for a selected delivery service (see Figure 8) and discloses the rates are disclosed for those carriers meeting the desired parameters (Column 22, lines 13-48). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Nicholls, to display the rates for multiple carriers, as disclosed by Kara, in order to allow a user to compare rates and choose a carrier themselves. (see Kara, Columns 3-5).

15. Kara discloses an onscreen interactive display with a selection and comparison section for a plurality of carriers with a plurality of services (See Figure 8). Kara discloses a display where the rates of each carrier are displayed adjacent to the selected services (See Figures 8A). However Kara does not specifically disclose the rates being calculated with respect to time. Both UPS® and FedEx® disclose specific services where they are guaranteed delivery by a certain time in the day. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the time sensitive “urgency” services, as disclosed by FedEx® and UPS®, in order to ship thing and compete with a time advantage using guaranteed delivery times and to reduce costs, when delivery time is not of importance. (See Fed Ex Page 1). Kara, UPS® and FedEx® fail to disclose the use of a graph which simultaneously displays a graph of shipping fees and services, where one axis being date and one axis being time and where each cell is located at the intersection of the date and time.

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16. Kara and Nicholls disclose generating an online display of at least one service of a plurality of carriers, however fails to disclose the simultaneous display of the rates for each carrier for each service. Intershipper is an internet, online website, where internet users can enter origin, destination, package weight and dimensions and will be displayed every method possible that you can use to ship your package for all major shippers (See Internet Update Article Page 1, Paragraphs 1-3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nicholls and Kara to display every method possible to ship a package, as disclosed by InterShipper, in order to find the cheapest shipping rate (See Page 1).

17. Nicholls, Kara, UPS and FedEx disclose calculating the date and time for each service, and InterShipper discloses arranging the results according to transit time, however fails to disclose the display including the date and time that is determined for each service calculated. Barnett discloses the use of a calendar which can be used for online purchasing of services (column 2, lines 63-67), where there is a graphical representation of date on one axis and time on another (See Figure 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to display the calculation of shipping rates, calculated by Kara, UPS® and FedEx® and Intershipper, in the format of displaying respective date and time, as disclosed by Barnett, in order to provide a multi-layers system wherein different categories can be overlaid on one another providing a single integrated display that allows a user to order or purchase a system based on the calendar day and time (See Barnett, column 2). The examiner considers that when the rates are displayed in a matrix, then each of the rates are displayed adjacent to the axis, and therefore displayed adjacent to the time and date of the service.

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18. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholls, Kara and Intershipper as applied to claim 9 above, and further in view of Boucher (6,976,007).

19. Nicholls discloses the use of multiple servers performing specific functions and discloses tracking as an option (See Figure 2) but fails to disclose the use of a server used for tracking.

Boucher discloses the use of a multi-carrier package tracking system, with a tracking server (22), which upon receipt of a user tracking request (191) through Instatrak (89), communicates with carrier servers to store tracking information and display to the user (See Column 4, lines 48-65 and Column 8, lines 10-22). Boucher discloses that once the specific carrier is determined an online connecting is established with the carrier and the information is obtained from the carrier through the online connection (See abstract and Reference Numerals 24 and 130 with corresponding detailed descriptions). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Nichols with the tracking server in the multi-carrier tracking system of Boucher, in order to provide a tracking service to a user, and allows a user to obtain prioritized tracking information from a carrier. (See Boucher abstract and column 3)

Response to Arguments

20. With respect to Applicant's argument that the server of Boucher uses the same server as the shipping server, therefore does not teach the limitation of a third server which performs the tracking: As stated in the office action, Nicholls discloses the use of server, and separate servers are used for each task, such as separate tracking server. Therefore even though Boucher discloses the tracking can be done using the same server as the shipping server, it is Nicholls

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who discloses the separating out of functionally aligned servers. Furthermore, whether there is one server which performs all the functions, or each function is performed using separate servers is considered to be obvious to of ordinary skill in the art. And the use of functionally aligned servers, and the use of one super computer, has been done at the time the invention was made, therefore whether to make the servers integral or separate is considered to be at the skill of one ordinary skill in the art.

21. With respect to Applicant's argument that Boucher does not disclose accessing a carrier system: Information in the Instatrak is used in Boucher to contact the carrier and receive update tracking information. The examiner considers this to be accessing a carrier system. When the request is first made, the tracking information is entered into the Instatrak, then the system determines a carrier, accesses the carrier system and obtains the status information. This accessing and obtaining data is then done automatically. The applicant has stated that it is inappropriate to dissect the claims into old and new elements and then to ignore the presence of the old elements in the analysis. However the examiner has not ignored any limitations of the claims, all limitations were considered. But due to the wordiness of the claims, the examiner has paraphrased the claim limitations in the rejection, which the examiner is allowed to do for clarity's sake. If the applicant feels a specific limitation has not been considered the examiner invites the applicant to point out the *specific* limitation which is not being considered. The applicant has recited a whole entire paragraph which was recited in the claims and states that not every limitations was considered, however the applicant should point out which specific limitation of the paragraph which was not considered, not merely the entire paragraph.

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22. With respect to Claim 2: the examiner has modified the rejection to cover the simultaneous display feature, therefore arguments are considered to be moot.

23. With respect to Claims 7, 9, 10 and 31: the applicant has amended the claims to recite the use of determining a date and time for each rate. The rejection above has been modified to cover the newly added claim limitations, therefore the arguments are considered to be moot in view of the new rejection.

24. With respect to Applicant's argument that the tracking server of Boucher is also a shipping server, and therefore not a dedicated server for tracking. Boucher, in Figure 1, discloses it as a shipping server, however throughout Boucher, the shipping server does nothing regarding shipping, but simply tracks. Therefore simply because Boucher discloses the server as being a shipping server, it is a dedicated server which is for tracking. In fact the system of Boucher is solely for tracking.

25. With respect to Applicant's argument that Boucher does not disclose having an online connection with the Carrier to obtain shipping status: Figure 1 of Boucher clearly shows the shipping server and the carrier being connected through the internet, therefore the examiner considers this to be an online connection. The applicant is arguing the specification having certain embodiments on how the connection is made, however the claims are not reciting the specifics of the connection. Furthermore, the use of HTML and XML are well known in the art.

26. With respect to Applicant's Argument B: Neither InterShipper nor Kara disclose a simultaneous display of rates: The applicant has stated a simultaneous display of rates is inferred from InterShipper, and this conclusion is unsupported. InterShipper states that the service will "return every method possible that you can use to ship your package and arrange the results in

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cost order and color code the results by approximate transit time". The InterShipper article may not explicitly disclose that the results are displayed on a computer screen, however InterShipper discloses all the information being given at one time. Kara discloses a computer display where multiple information is given for one package for a user to make a choice, the display is a simultaneous display of rates for each carrier, yet in order for the user to receive a display for each service, the user must click on each service and calculate. InterShipper discloses some sort of display, whether it be in terms of a computer screen, or a piece of paper, the user is provided with all the information at one time. Therefore the combination of references, Kara and InterShipper, would provide the simultaneous computer display of all the rates for all the carriers for each service.

27. With respect to Applicant's argument that Barnett does not disclose a display of rates: It is asserted that there is no disclosure in any of the references which would include the identification of "...a [particular] day on which a [particular] carrier would deliver a particular package to a particular destination according to a particular shipping date, if [the particular] carrier were to deliver said package to said destination via a [particular] delivery service.." It is agreed that there is no one reference which teaches the entire limitation, however it is the combination of all the references which provide this limitation. Kara and InterShipper disclose calculating and displaying simultaneous display of rates of each carrier of each service, the UPS and FedEx references discloses determining dates and times for shipments. Barnett discloses a calendaring system which displays things on a time and date basis. Even though the Calendaring system of Barnett is used for a different reason, Barnett discloses the calendar can be used for scheduling of services and what services or available. Therefore the determination of date and

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time is done by the UPS and the FedEx references, Barnett is simply displaying them in a certain fashion. It is the examiner's position that the combination of references discloses the claim limitations as recited.

28. With respect to Applicant's argument that UPS and FedEx do not disclose a simultaneous display of rates and times and do not disclose a determination of dates and times for delivery of a parcel: As stated by the rejection this feature is not taught by any one reference, however a combination of references. The FedEx and the UPS references show different urgencies, and these urgencies (next day, two day etc.) have times associated with the delivery, such as early morning or end of day time. The references show rules of each service of the carrier. UPS also discloses the use of a Time in Transit calculator. Barnett discloses the use of a calendaring system, and where as Barnett's calendaring system does not specifically state it is used for shipping, it states that it is used for service related items. Shipping is considered to be a service. And also discloses multiple service items can be shown on the calendar for comparison shopping purposes. Therefore, if the shipping was to be put on the calendar, than it is obvious that a date and time are going to need to be determined in order to display on the calculator. It is old and well known that when shipping a package through a commercial carrier, when you go into the carrier office, they will tell you a date that the item is promised by. Therefore dates are calculated by commercial carriers on a daily basis. Therefore even though one reference may not teach the entire reference, the combination of Nicholls, Kara, UPS, FedEx, Intershipper and Barnett discloses determining a delivery date and time for each carrier and each service.

29. With respect to Applicant's argument that Kara requires a pre-selection of a delivery service before calculating a rate: the examiner has not relied on Kara to disclose the

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simultaneous display of every service of every carrier, Intershipper is relied on for that limitation. Therefore argument is not considered to be persuasive.

30. Arguments are not considered to be persuasive, and rejections stand as stated above.

Conclusion

31. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMISUE A. PLUCINSKI whose telephone number is (571)272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jamisue A. Plucinski/
Primary Examiner, Art Unit 3629